

105TH CONGRESS  
2D SESSION

# H. R. 3745

To prevent money laundering.

---

## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1998

Mr. McCOLLUM (for himself, Mr. SCHUMER, Mr. HASTERT, Mr. PORTMAN, Mr. GOSS, and Mr. SOLOMON) introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To prevent money laundering.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Money Laundering Act  
5       of 1998”.

6       **SEC. 2. TABLE OF CONTENTS.**

7       The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Illegal money transmitting businesses.
- Sec. 4. Restraint of assets of persons arrested abroad.
- Sec. 5. Access to records in bank secrecy jurisdictions.
- Sec. 6. Civil money laundering jurisdiction.
- Sec. 7. Laundering money through a foreign bank.
- Sec. 8. Specified unlawful activity for money laundering.
- Sec. 9. Criminal forfeiture for money laundering conspiracies.

- Sec. 10. Subpoenas for bank records.
- Sec. 11. Admissibility of foreign business records.
- Sec. 12. Charging money laundering as a course of conduct.
- Sec. 13. Venue in money laundering cases.
- Sec. 14. Technical amendment to restore wiretap authority for certain money laundering offenses.
- Sec. 15. Knowledge that the property is the proceeds of a felony.
- Sec. 16. Money purchased on the black market.
- Sec. 17. Asset forfeiture transfers.
- Sec. 18. Receipt and deposit amendment.
- Sec. 19. Coverage of foreign bank branches in the territories.

**1 SEC. 3. ILLEGAL MONEY TRANSMITTING BUSINESSES.**

2 (a) CIVIL FORFEITURE FOR MONEY TRANSMITTING  
 3 VIOLATION.—Section 981(a)(1)(A) of title 18, United  
 4 States Code, is amended by striking “or 1957” and insert-  
 5 ing “, 1957 or 1960”.

6 (b) SCIENTER REQUIREMENT FOR SECTION 1960  
 7 VIOLATION.—Section 1960 of title 18, United States  
 8 Code, is amended by adding at the end the following:

9 “(c) For the purposes of proving a violation of this  
 10 section involving an illegal money transmitting business  
 11 as defined in subsection (b)(1)(A), it shall be sufficient  
 12 for the Government to prove that the defendant knew that  
 13 the money transmitting business lacked a license required  
 14 by State law. It shall not be necessary to show that the  
 15 defendant knew that the operation of such a business  
 16 without the required license was an offense punishable  
 17 under State law.”.

1 **SEC. 4. RESTRAINT OF ASSETS OF PERSONS ARRESTED**  
2 **ABROAD.**

3 Section 981(b) of title 18, United States Code, is  
4 amended by adding at the end the following:

5 “(3) If any person is arrested or charged in a foreign  
6 country in connection with an offense that would give rise  
7 to the forfeiture of property in the United States under  
8 this section or under the Controlled Substances Act, the  
9 Attorney General may apply to any Federal judge or mag-  
10 istrate judge in the district where the property is located  
11 for an ex parte order restraining the property subject to  
12 forfeiture for not more than 30 days, except that the time  
13 may be extended for good cause shown at a hearing con-  
14 ducted in the manner provided in rule 43(e) of the Federal  
15 Rules of Civil Procedure. The application for the restrain-  
16 ing order shall set forth the nature and circumstances of  
17 the foreign charges and the basis for belief that the person  
18 arrested or charged has property in the United States that  
19 would be subject to forfeiture, and shall contain a state-  
20 ment that the restraining order is needed to preserve the  
21 availability of property for such time as is necessary to  
22 receive evidence from the foreign country or elsewhere in  
23 support of probable cause for the seizure of the property  
24 under this subsection.”.

1 **SEC. 5. ACCESS TO RECORDS IN BANK SECRECY JURISDIC-**  
2 **TIONS.**

3 Section 986 of title 18, United States Code, is  
4 amended by adding at the end the following:

5 “(d) In any civil forfeiture case, or in any ancillary  
6 proceeding in any criminal forfeiture case governed by sec-  
7 tion 413(n) of the Controlled Substances Act (21 U.S.C.  
8 853(n)), where—

9 “(1) financial records located in a foreign coun-  
10 try may be material—

11 “(A) to any claim or to the ability of the  
12 Government to respond to such claim; or

13 “(B) in a civil forfeiture case, to the Gov-  
14 ernment’s ability to establish the forfeitability  
15 of the property; and

16 “(2) it is within the capacity of the claimant to  
17 waive the claimant’s rights under such secrecy laws,  
18 or to obtain the records directly so that the records  
19 can be made available,

20 the refusal of the claimant to provide the records in re-  
21 sponse to a discovery request or take the action necessary  
22 otherwise to make the records available shall result in the  
23 dismissal of the claim with prejudice. This subsection does  
24 not affect the claimant’s rights to refuse production on  
25 the basis of any privilege guaranteed by the Constitution  
26 or laws of the United States.”.

1 **SEC. 6. CIVIL MONEY LAUNDERING JURISDICTION.**

2 Section 1956(b) of title 18, United States Code, is  
3 amended—

4 (1) by inserting “(1)” after “(b)”;

5 (2) by redesignating present paragraphs (1)  
6 and (2) as subparagraphs (A) and (B), respectively;

7 (3) by inserting “, or section 1957” after “or  
8 (a)(3)”;

9 (4) by adding at the end the following:

10 “(2) For purposes of adjudicating an action filed or  
11 enforcing a penalty ordered under this section, the district  
12 courts shall have jurisdiction over any foreign person, in-  
13 cluding any financial institution authorized under the laws  
14 of a foreign country, that commits an offense under sub-  
15 section (a) involving a financial transaction that occurs in  
16 whole or in part in the United States, if that service of  
17 process upon such foreign person is made under the Fed-  
18 eral Rules of Civil Procedure or the laws of the country  
19 where the foreign person is found.

20 “(3) The court may issue a pretrial restraining order  
21 or take any other action necessary to ensure that any bank  
22 account or other property held by the defendant in the  
23 United States is available to satisfy a judgment under this  
24 section.”.

1 **SEC. 7. LAUNDERING MONEY THROUGH A FOREIGN BANK.**

2 Section 1956(c)(6) of title 18, United States Code,  
3 is amended to read as follows:

4 “(6) the term ‘financial institution’ includes any  
5 financial institution described in section 5312(a)(2)  
6 of title 31, United States Code, or the regulations  
7 promulgated thereunder, as well as any foreign  
8 bank, as defined in paragraph (7) of section 1(b) of  
9 the International Banking Act of 1978 (12 U.S.C.  
10 3101(7)).”.

11 **SEC. 8. SPECIFIED UNLAWFUL ACTIVITY FOR MONEY LAUN-**  
12 **DERING.**

13 (a) IN GENERAL.—Section 1956(c)(7) of title 18,  
14 United States Code, is amended—

15 (1) in subparagraph (B)—

16 (A) so that clause (ii) reads as follows:

17 “(ii) any conduct constituting a crime  
18 of violence;”; and

19 (B) by inserting after clause (iii) the fol-  
20 lowing:

21 “(iv) fraud, or any scheme to defraud,  
22 committed against a foreign government or  
23 foreign governmental entity;

24 “(v) bribery of a public official, or the  
25 misappropriation, theft, or embezzlement

1 of public funds by or for the benefit of a  
2 public official;

3 “(vi) smuggling or export control vio-  
4 lations involving munitions listed in the  
5 United States Munitions List or tech-  
6 nologies with military applications as de-  
7 fined in the Commerce Control List of the  
8 Export Administration Regulations; or

9 “(vii) an offense with respect to which  
10 the United States would be obligated by a  
11 multilateral treaty either to extradite the  
12 alleged offender or to submit the case for  
13 prosecution, if the offender were found  
14 within the territory of the United States.”;

15 (2) in subparagraph (D)—

16 (A) by inserting “section 541 (relating to  
17 goods falsely classified),” before “section 542”;

18 (B) by inserting “section 924(m) (relating  
19 to firearms trafficking),” before “section 956”;

20 (C) by inserting “section 1030 (relating to  
21 computer fraud and abuse),” before “1032”;

22 and

23 (D) by inserting “any felony violation of  
24 the Foreign Agents Registration Act of 1938,

1 as amended,” before “or any felony violation of  
2 the Foreign Corrupt Practices Act”; and

3 (3) in subparagraph (E)—

4 (A) by inserting “section 42 or 43 of this  
5 title (commonly called the Lacey Act),” after “a  
6 felony violation of”;

7 (B) by inserting “the Clean Air Act (42  
8 U.S.C. 7401 et seq.),” after “the Safe Drinking  
9 Water Act (42 U.S.C. 300f et seq.),”.

10 (b) NATIONAL SECURITY.—Section 1956(d) of title  
11 18, United States Code, is amended by adding at the end  
12 the following: “This section does not apply to any official  
13 conduct by a representative of, or to an action which is  
14 authorized by and conducted on behalf of, the United  
15 States Government.”.

16 **SEC. 9. CRIMINAL FORFEITURE FOR MONEY LAUNDERING**  
17 **CONSPIRACIES.**

18 Section 982(a)(1) of title 18, United States Code, is  
19 amended by inserting “, or a conspiracy to commit any  
20 such offense” after “of this title”.

21 **SEC. 10. SUBPOENAS FOR BANK RECORDS.**

22 Section 986 of title 18, United States Code, is  
23 amended—

24 (1) in subsection (a)—



1 (A) by striking “section 1956, 1957, or  
2 1960 of this title, section 5322 or 5324 of title  
3 31, United States Code” and inserting “section  
4 981 or 982 of this title”;

5 (B) by inserting “before or” before  
6 “after”;

7 (C) by striking “in rem”; and

8 (D) by striking the last sentence; and

9 (2) in subsection (c), by inserting “or the Fed-  
10 eral Rules of Criminal Procedure” after “Proce-  
11 dure”.

12 **SEC. 11. ADMISSIBILITY OF FOREIGN BUSINESS RECORDS.**

13 (a) IN GENERAL.—Chapter 163 of title 28, United  
14 States Code, is amended by adding at the end the follow-  
15 ing:

16 **“§ 2466. Foreign records**

17 “(a) In a civil proceeding in a court of the United  
18 States, including civil forfeiture proceedings and proceed-  
19 ings in the United States Claims Court and the United  
20 States Tax Court, a foreign record of regularly conducted  
21 activity, or copy of such record, obtained pursuant to an  
22 official request, shall not be excluded as evidence by the  
23 hearsay rule if a foreign certification, also obtained pursu-  
24 ant to the same official request or subsequent official re-

1 quest that adequately identifies such foreign record, at-  
2 tests that—

3 “(1) such record was made, at or near the time  
4 of the occurrence of the matters set forth, by (or  
5 from information transmitted by) a person with  
6 knowledge of those matters;

7 “(2) such record was kept in the course of a  
8 regularly conducted business activity;

9 “(3) the business activity made such a record  
10 as a regular practice; and

11 “(4) if such record is not the original, such  
12 record is a duplicate of the original; unless the  
13 source of information or the method or cir-  
14 cumstances of preparation indicate lack of trust-  
15 worthiness.

16 “(b) A foreign certification under this section shall  
17 authenticate such record or duplicate.

18 “(c) As soon as practicable after a responsive plead-  
19 ing has been filed, a party intending to offer in evidence  
20 under this section a foreign record of regularly conducted  
21 activity shall provide written notice of that intention to  
22 each other party. A motion opposing admission in evidence  
23 of such record shall be made by the opposing party and  
24 determined by the court before trial. Failure by a party  
25 to file such motion before trial shall constitute a waiver

1 of objection to such record or duplicate, but the court for  
2 cause shown may grant relief from the waiver.

3 “(d) As used in this section—

4 “(1) the term ‘foreign record of regularly con-  
5 ducted activity’ means a memorandum, report,  
6 record, or data compilation, in any form, of acts,  
7 events, conditions, opinions, or diagnoses, main-  
8 tained in a foreign country;

9 “(2) the term ‘foreign certification’ means a  
10 written declaration made and signed in a foreign  
11 country by the custodian of a record of regularly  
12 conducted activity or another qualified person, that  
13 if falsely made, would subject the maker to criminal  
14 penalty under the law of that country;

15 “(3) the term ‘business’ includes business, insti-  
16 tution, association, profession, occupation, and call-  
17 ing of every kind whether or not conducted for prof-  
18 it; and

19 “(4) the term ‘official request’ means a letter  
20 rogatory, a request under an agreement, treaty or  
21 convention, or any other request for information or  
22 evidence made by a court of the United States or an  
23 authority of the United States having law enforce-  
24 ment responsibility to a court or other authority of  
25 a foreign country.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 at the beginning of chapter 163 of title 28, United States  
3 Code, is amended by inserting at the end the following  
4 new item:

“2466. Foreign records.”.

5 **SEC. 12. CHARGING MONEY LAUNDERING AS A COURSE OF**  
6 **CONDUCT.**

7 Section 1956(h) of title 18, United States Code, is  
8 amended—

9 (1) by inserting “(1)” before “Any person”;  
10 and

11 (2) by adding at the end the following:

12 “(2) Any person who commits multiple violations of  
13 this section or section 1957 that are part of the same  
14 scheme or continuing course of conduct may be charged,  
15 at the election of the Government, in a single count in  
16 an indictment or information.”.

17 **SEC. 13. VENUE IN MONEY LAUNDERING CASES.**

18 Section 1956 of title 18, United States Code, is  
19 amended, by adding at the end the following subsection:

20 “(i) VENUE.—(1) Except as provided in paragraph  
21 (2), a prosecution for an offense under this section or sec-  
22 tion 1957 may be brought in any district in which the  
23 financial or monetary transaction is conducted, or where  
24 a prosecution for the underlying specified unlawful activity  
25 could be brought.

1       “(2) A prosecution for an attempt or conspiracy of-  
2 fense under this section or section 1957 may be brought  
3 in the district where venue would lie for the completed of-  
4 fense under paragraph (1), or in any other district where  
5 an act in furtherance of the attempt or conspiracy took  
6 place.”.

7       **SEC. 14. TECHNICAL AMENDMENT TO RESTORE WIRETAP**  
8                               **AUTHORITY FOR CERTAIN MONEY LAUNDER-**  
9                               **ING OFFENSES.**

10       Section 2516(1)(g) of title 18, United States Code,  
11 is amended by striking “a violation of section 5322 of title  
12 31, United States Code (dealing with the reporting of cur-  
13 rency transactions)” and inserting “a violation of section  
14 5322 or 5324 of title 31, United States Code (dealing with  
15 the reporting and illegal structuring of currency trans-  
16 actions)”.

17       **SEC. 15. KNOWLEDGE THAT THE PROPERTY IS THE PRO-**  
18                               **CEEDS OF A FELONY.**

19       Section 1956(c)(1) of title 18, United States Code,  
20 is amended by inserting “, and regardless of whether or  
21 not the person knew that the activity constituted a felony”  
22 before the semicolon at the end.

1 **SEC. 16. MONEY PURCHASED ON THE BLACK MARKET.**

2 (a) IN GENERAL.—Section 981(a) of title 18, United  
3 States Code, is amended by adding at the end the follow-  
4 ing:

5 “(3) A person asserting an innocent owner defense  
6 under paragraph (2), or any other provision of law, in cur-  
7 rency, monetary instruments or funds purchased from a  
8 money broker must be a bona fide purchaser for value  
9 without reason to know that the currency, monetary in-  
10 struments or funds were subject to forfeiture, and must  
11 establish that such person took all reasonable affirmative  
12 steps to determine the source of the currency, monetary  
13 instruments or funds, or to verify that the currency, mone-  
14 tary instruments or funds were not derived from illegal  
15 activity.

16 “(4) For purposes of paragraph (3)—

17 “(A) the term ‘money broker’ means any person  
18 who sells or exchanges currency, monetary instru-  
19 ments or funds, either in the United States or in a  
20 foreign country, either independently, or through  
21 any parallel market, black market, casa de cambio,  
22 or other currency exchange business; and

23 “(B) what constitutes ‘all reasonable affirma-  
24 tive steps’ depends on the facts and circumstances  
25 surrounding the transaction, but if the money broker  
26 is a financial institution, as defined in section 20 of

1       this title, the purchaser takes ‘all reasonable affirm-  
2       ative steps’ if the purchaser conducts the transaction  
3       at the financial institution during normal business  
4       hours in an arms-length transaction and has no rea-  
5       son to know that the currency, monetary instru-  
6       ments, or funds were derived from or used to com-  
7       mit any unlawful activity.”.

8       (b) APPLICATION.—The amendments made by this  
9       section shall apply to any case pending on the effective  
10      date of this Act.

11   **SEC. 17. ASSET FORFEITURE TRANSFERS.**

12       Section 511(e)(1)(E)(iii) of the Controlled Sub-  
13      stances Act (21 U.S.C. 881(e)(1)(E)(iii)) is amended by  
14      inserting “, or to a country that has not been so certified,  
15      if the Secretary of State finds that transfer to be in the  
16      national interest” before the period.

17   **SEC. 18. RECEIPT AND DEPOSIT AMENDMENT.**

18       The United States Sentencing Commission shall  
19      amend or promulgate sentencing guidelines to provide that  
20      the sentence for an offense under section 1957 of title 18,  
21      United States Code, if the transaction in criminally de-  
22      rived property consists of a deposit of that property in  
23      a financial institution without any intent to disguise or  
24      conceal the nature, location, source, ownership, or control  
25      of such proceeds, shall not exceed the sentence for the of-

1 fense giving rise to such property by more than one of-  
2 fense level.

3 **SEC. 19. COVERAGE OF FOREIGN BANK BRANCHES IN THE**  
4 **TERRITORIES.**

5 Section 20(9) of title 18, United States Code, is  
6 amended by inserting “, except that, for purposes of the  
7 application of that definition, the term ‘State’ as used in  
8 such Act includes a commonwealth, territory, or posses-  
9 sion of the United States” after “Banking Act of 1978”.

○